



GOVERNMENT
ACCOUNTABILITY
PROJECT

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June 27, 2019

The Honorable Elijah Cummings
Chairman
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bennie Thompson
Chairman
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Mike Rogers
Ranking Member
House Committee on Homeland Security
310 Cannon House Office Building
Washington, D.C. 20515

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Gary Peters
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Committee Chairmen and Ranking Members:

The Government Accountability Project asks your Committees to further investigate flagrant abuses and violations of laws, rules, and regulations committed by Immigration and Customs Enforcement and the Department of Homeland Security. On June 3, 2019, the Department of Homeland Security Office of Inspector General (DHS OIG) issued a report, [*Concerns about ICE*](#)

Detainee Treatment and Care at Four Detention Facilities, that while horrific in its findings, merely scratched the surface of systematic abuses and violations reported by whistleblowers. Specifically, while investigators examined and identified wrongdoing at four adult detention facilities, they failed to address whistleblower-reported abuses across the entire adult detention system of more than 200 facilities, including the irregular and overuse of solitary confinement, especially as applied to mentally ill and other vulnerable individuals and groups.

The DHS OIG has the power to conduct a sweeping probe utilizing the significant information they have received from whistleblowers. Instead, they have attempted to satiate whistleblowers' and Congress' concerns with a headline-inducing sampling of wrongdoing. This report is consistent with the IG's failure to look into systemic abuses—and it is an internal watchdog's duty to investigate the flagrant abuses about which they have been alerted to their completion.

The Government Accountability Project is the global leader in whistleblower advocacy and protection. We currently represent multiple immigration whistleblowers who have made disclosures to the DHS OIG about systemic problems in detention facilities that endanger both children and adult migrants.

One of our clients, Ellen Gallagher, as a policy advisor for DHS' Office of Civil Rights and Civil Liberties, made disclosures to the DHS OIG regarding ICE's severe and recurring violations of statutory mandates and federal detention standards. ICE repeatedly used solitary confinement on mentally ill detainees and in other inappropriate cases, evidenced in hundreds of ICE's own segregation reports from across dozens of detention facilities. She also disclosed inadequate, and, in some cases, non-existent, mental health and medical services provided to detainees. Some of the more egregious fact patterns reported by Ms. Gallagher include:

- A mentally ill detainee “found guilty of possession of an unauthorized item” – a green pepper “hidden” in his sock and sentenced to 15 days in disciplinary segregation;
- A mentally ill detainee placed in disciplinary segregation pending investigation because he “admitted blowing kisses to [the] GEO officer posted in [the] dormitory;”
- Detainees on “suicide watch” routinely placed in isolation without information as to the length of time they were assigned to remain there, the frequency with which they would be monitored, or the medical treatment they would receive;
- Detainees stripped bare and placed in “suicide smocks” in complete isolation; out of fear that they would be subjected to such treatment, some detainees admitted not disclosing suicidal ideation; and
- Sample 30-day reports from a regional jail showed mentally ill immigration detainees naked in deplorable conditions and denied reentry to the general population until they agreed to maintain “proper hygiene.”

Relevant to Ms. Gallagher's disclosures, the IG report found, among other violations, that three out of four sites visited used improper segregation practices which both violated ICE policy standards and infringed upon detainee rights. The findings included premature placement into solitary confinement, use of restraints at all times when detainees were outside their cells, strip searches upon entering isolation, and inadequate time outside cells. While this report's conclusions substantively confirmed Ms. Gallagher's disclosures, made over a period of almost

five years, they only exposed the tip of the iceberg. Ms. Gallagher's disclosures documented hundreds of examples of ICE's inappropriate use of solitary confinement, which have yet to be investigated by internal DHS watchdogs. This suggests her concerns are widespread across hundreds of facilities and need to be investigated and addressed immediately.

Of equal concern to us is the accountability failure the IG report exposes. Not only did Ms. Gallagher make disclosures to DHS OIG, she also made disclosures to DHS's Office of Civil Rights and Civil Liberties (CRCL), which repeatedly chose not to investigate the individual cases she raised that evidenced serious violations of detention standards. Further, she filed a whistleblower disclosure with the Office of Special Counsel (OSC), which expressly abdicated its duty to investigate Ms. Gallagher's disclosures after years of back-and-forth, including two separate requests for reconsideration by Ms. Gallagher. Rather than act upon these urgent pleas and the reams of information associated with them, the OSC instead found it acceptable to defer to the OIG's own incomplete investigation.

The failure of the executive accountability sphere (CRCL, the DHS OIG, and the OSC) to investigate some of the most serious and systemic abuses that harm the most vulnerable populations in the immigration system points to a much larger problem: there is no meaningful mechanism in the executive branch to ensure oversight and accountability on these issues. The oversight system is failing to hold the administration accountable in the face of documented and profoundly disturbing concerns identified by whistleblowers.

We also represent Drs. Scott Allen and Pamela McPherson, two whistleblowers who currently serve as the medical and mental health subject matter experts for DHS's Office of Civil Rights and Civil Liberties. Drs. Allen and McPherson have raised concerns to CRCL leadership, the DHS OIG, and Congress about systemic problems in the provision of care at Family Residential Centers which, exacerbated by expanded detention with the implementation of the "zero-tolerance" immigration policies and practices, pose the threat of imminent, foreseeable harm to children in detention.¹

The OIG has never acknowledged receipt of, let alone conducted an investigation into, Drs. Allen and McPherson's disclosures, first submitted almost exactly one year ago on June 25, 2018 which explicitly warned that a hastily deployed expansion of family detention unnecessarily places children at **imminent threat of risk** of significant mental health and medical harm. CRCL likewise has not conducted onsite investigations of family detention centers since September 2017 despite being aware of the systemic problems that put children in detention at risk of physical and psychological harm.² While the DHS OIG will soon be issuing a report focusing on horrific conditions at U.S. Customs and Border Protection (CBP) holding facilities, as reported by [BuzzFeed News](#), this report will not address any of the issues raised by Drs. Allen and

¹ See, e.g., July 17, 2018 [Letter to Senate Whistleblower Caucus Chairs](#) from Drs. Scott Allen and Pamela McPherson; Comments by Drs. Allen and McPherson on the *Immigration and Customs Enforcement Bureau (ICEB) Proposed Rule, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, <https://www.regulations.gov/document?D=ICEB-2018-0002-18931>.

² See March 19, 2019 Letter to Congress from Drs. Allen and McPherson, <https://jayapal.house.gov/wp-content/uploads/2019/03/031919-whistleblowers-letter-to-congress-w-cover-letter-fact-sheet-re-children-in-detention.pdf>.

McPherson, [echoed by](#) immigration justice advocates, about known problems at family detention centers.

We followed up with the watchdog by peppering them with emails. But the doctors' disclosures went unanswered. As they [wrote](#) in the Washington Post last December, "[We warned DHS that a migrant child could die in custody. Now one has.](#)"

DHS OIG's recent report is a much needed and oft-delayed step toward holding ICE accountable. But there is still a pressing need for legitimate oversight that captures the full extent of ICE's and DHS's violations; accountability regarding the scope and recommendations of OIG's investigations; and explanations for CRCL's and OSC's lack of action on these matters at all. Whistleblowers' concerns should not only be acknowledged—they should be fully investigated, by both the administration and the Congress, to identify and correct abuses affecting millions of detainees and their families across the country.

Given the discrepancy between the abuses revealed in the DHS OIG's spot-check of these four sites and Ms. Gallagher's and Drs. Allen's and McPherson's disclosures concerning similar abuses across the full detention system, we are asking your committees to hold a two-panel hearing evaluating this report in brief, adult, child and family detention writ large, and executive branch oversight failures. One panel should represent the internal watchdogs responsible for overseeing immigration policy, including the acting DHS IG, the DHS CRCL Director, and the OSC's Special Counsel, so that they may better inform members' of their oversight responsibilities and actions toward unlawful detention practices. The second panel should allow whistleblowers and subject matter experts, who have primary knowledge of detention facility conditions, to testify to the extent of these violations and pinpoint avenues for further oversight.

Our whistleblowers have made disclosures on these issues in thorough detail;³ the responses to those disclosures reveal serious executive accountability failures. Thus we encourage you, as legislative watchdogs over the executive branch agencies, to investigate the weaknesses of existing accountability mechanisms to identify, address and prevent some of the most serious abuses ever executed by this government agency.

These whistleblowers remain available as a resource to further your committees' oversight into their disclosures and ICE detention practices. Please contact Irvin McCullough at IrvinM@whistleblower.org and Dana Gold at DanaG@whistleblower.org for more information.

Sincerely,

Government Accountability Project
Dana L. Gold, Senior Counsel
Irvin McCullough, National Security Analyst

³ Ms. Gallagher was forced to go to the media after years of raising her concerns through every avenue within the government failed to result in any meaningful investigation to address the widespread use of solitary confinement in immigration detention. See "[A Homeland Security Whistleblower Goes Public About ICE Abuse of Solitary Confinement](#)," *The Intercept* (May 21, 2019) and "[Thousands of Immigrants Suffer in Solitary Confinement in U.S. Detention Centers](#)," *NBC News* (May 21, 2019).